

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

IN RE: SHALE OIL ANTITRUST  
LITIGATION

Case No. 1:24-md-03119-MLG-LF

This Document Relates to All Actions

**DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants respectfully call the Court's attention to *In re Concrete & Cement Additives Antitrust Litigation*, 24-md-3097 (LJL) (S.D.N.Y. June 25, 2025) ("Op."), attached hereto as Exhibit A, granting defendants' motion to dismiss an action that, like this case, alleged price fixing in violation of federal antitrust law and state laws. Like plaintiffs here (Dkt. 129 ("MTD") 19-20), the *Concrete* plaintiffs did not allege direct evidence of price fixing but relied on allegations of parallel conduct and "plus factors" (Op. 21).

The court rejected the allegations of parallel conduct because the pleaded price increases were different in amounts, ranging from 1.9% to 20%, and occurred at different times over ten months. (*Id.* 21-32.) Here, defendants allegedly changed their production rates by amounts even more divergent than in *Concrete*—from -63% to +56%—and the changes occurred over an even longer period, three years. (MTD 22-24; *see also* Op. 30 ("Ten months is a long time. Plaintiffs do nothing to establish how a price increase in the last month or two of that period has any relation to a price increase at the beginning of the period.").) Plaintiffs here also "do not identify any overarching pattern connecting these divergent increases to one another." (Op. 29.) As in *Concrete*, these failures are "fatal to their claims under Section 1." (*Id.* 34.)

The *Concrete* court also rejected purported plus factors that track the ones plaintiffs rely on here—that defendants (i) belonged to the same trade associations; (ii) operated in a highly consolidated market; (iii) were similarly motivated to conspire; (iv) were subject to investigations by UK, EC, and U.S. antitrust regulators; (v) did not reduce prices when input costs declined; and (vi) told investors that they were focused on disciplined pricing to improve profitability (*id.* 35-48)—holding they were consistent with competition and did not suggest an agreement to fix prices. Plaintiffs’ alleged plus factors here similarly do not render the alleged conspiracy plausible. (MTD 25-32.)

Finally, because the Section 1 claim failed, the *Concrete* court dismissed the state law claims (Op. 48-50), which supports defendants’ similar argument here (MTD 38-39).

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Respectfully submitted,

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